OFFICES
AND
PLACES OF TRUST
NOT TO BE
BOUGHT or SOLD,
OR GIVEN
TO INSUFFICIENT PERSONS.

Discovered in a sober and Peaceable
LETTER.

LONDON,
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1660.

The Publisher to the Reader.

READER,

THere are vitia temporis, as well as vitia hominis; Therefore the following Letter coming casually to my hands, and I conceiving it to be bent against crimes and peccancies, (which no time wants) and not at all against persons high or low, did resolve to endeavour to make it publick; the rather because I perceive the Author cites Authority almost for every paragraph of it, which thou mayst examine, and believe or not believe, as thou findest the quotations true or false; I confidently presume, I doe His Sacred Majesty service hereby, for to have the Law duly executed will much conduce to His Majesties honour, and stop the mouths of gainsayers and murmurers, (if any such should be) against His Highness Government; I really tell thee, that I believe the Authors end to be honest and sincere, and therefore it is that thou hast this trouble from me, and for my part, thou mayst assure thy self, that I have no higher end in it then faithfully to serve His Majesty, and his Realmes, take it therefore in good part from

Thy humble servant

20. Sept. 1660.

N. T.

SIR,

BEfore I answer your Question, I shall according to my best memory and skill (within that little stint of time, to which I am limited by you,) give you my judgement, how the Law expects the qualifications of all those, who are to be subordinate Magistrates, Officers and Deputies under *His Majesty*, in the managery of His Government, and Administration of Justice, to be; and because I tell you what the Law expects they should be, I do thereby omit to tell you, what the Law of God saith they should be, but refer you to the 17. *Exod.* 19. &c. touching *Jethroes* Counsell to *Moses*, and the 1 *Deut.* 9. &c. which duely compared with our Law in this respect; you shall find this to be the daughter, (if not the first-born) of that, attended with the auxiliary force of Divines, Philosophers, Moralists, yea Pagans and Heathens in generall, that retain any thing of the first pure impresses of nature upon them, and are not quite immersed in forlorn and barren Rusticity and Barbarisme.

* *Plowd.* 380.
† *Finches* Law. fol. 161.

And because *Cicero in his first book of Offices* saith, that every orderly discourse, *debet à definitione proficisci*, I shall begin with such definition or description, that the Law only gives of an Office or subordinate Magistracy; and then proceed according to my purpose.

* *Plowden* a very learned Lawyer tells us, That *an Office is a thing to be exercised by the body of a Man.* Another † Lawyer of great esteem saith, *An Office is a duty of Attendance upon a Charge.*

But an Officer is described to be, *One who receiveth by publick Authority the Charge and over-sight of humane affaires belonging to the Commonwealth.* Sig de Jur. Rom. lib. 1. c. 10. *Co lib.* 8 *f.* 41 *b.*

This being the nature of an Office or Charge, the Law tells us the person or persons that must attend it ought be, *Habiles & idonei, & pares Negotiis.* As

1. They ought to be honest. 2. Knowing and capable. 3. Able. 4. Diligent.

2. They

12. R. 2. cap. 2. 2. They ought to come to their Imployments and Offices, *sine præmio, sine precio, & sine prece*, &c.

2 Instit. f. 32. 3. They ought to be a grace to the place, and not the place a grace to them.

Now the right choice of Officers and subordinate Ministers of State, according to these qualifications, will very much promote the happiness of the Kingdom, for it will be the *principle* as well as the *duty* of such men to advance the Administration of Justice,

14 Prov. 34. *and Justice or Righteousness*, (as the wise man saith) *exalteth a Nation*.

And if these *Præcognita* be not observed in their choice, but that either money or wry and warping affection shall sway in this Case, each of which the Law accounts *Turpis Consideratio*, for *quilibet tenetur magis recompensare virtuoso, quam Amico aut venundatori*.) Then may it be said to us, as once *Ingurtha* said to

Co. lit. 234. Rome, *Vade venalis Civitas, mox peritura, si emptorem invenias*: and it is observed by the Lord *Coke* out of *Erod.* fol. 353. *That*

Erod. 553. *nulla alia re magis Romana Respublica interiit, quam quod Magistratus Officia venalia erant.*

It is most true that if Offices and Places of Trust in any Nation, should be given to men *not qualified* for them, or *sold*, as it were in the market for the utmost penny, or for any money at all (in truth,) this would be a bar to all generous endeavours; for who would industriously and strenuously betake himself to any ingenious Art or Profession, if *money* or *squint-affection* shall preponderate true worth? friends or money then will do that which paines, learning and long experience (which is the *Oracle* of time, and is indeed *gotten by length of time and variety of occurrences*) shall never be able to compass without them; these are the *fodder* of the Bruitish or sensuall part of man, but not his *purest earthly nutriment*, much less his *Heavenly one*; and it is the fate of wise men often to be *poor*, and I cannot call it their *fault* to be *modest*; they are poor; they *cannot buy*; they are modest, they *will not* buy, because they conceive merit over-weighs money, or friendship, in wise mens esteem.

And now give me leave to transpose the order, I first began with, and to bring instances from History and other Authorities, before I come to give you the verdict of our Common and Statute

tute Lawes of *England* in this Case, and I pray pretermit my hasty faults of want of due order in what I offer, and be pleased to heed the matter proposed, and its weight, above a regular School-method, which I affect, but have not time to observe; nor in truth do I esteem it of pure necessity, but among extreme Criticks, if things be but clearly offered to the Readers understanding.

It is observed by an Historian, as an Excellent quality in *Tamerlane* the great, and Commander of the Tartars, *That he bestowed his preferments not on those that ambitiously sought the same, (for such he deemed unworthy) but on such, as whose modesty and desert he thought worthy of those his great favours.* And the Historian observes further, *that the services of his servants he never forgot — he kept a Catalogue of their Names and good Deserts, and that day was lost with him, wherein he had not GIVEN something to such.* Turkish History. fol. 227

This Noble *Scythian*, for such he was by Nation, not only observ'd, but searched out desert; kept a Catalogue of Deserving men, perused it every day (as well knowing, that merit and worth is too apt to retire it self into the shade of a modest privacy,) and (as we see) he was every day giving something to such, and not selling. And this he was taught to do from the meer light of reason and ordinary notions of nature, without any motive of piety, the fear of God, or the least aide from true Region.

The *Romans* had a Law which the Civil Lawyers call *Lex Julia de Ambitu*, which *Cicero* in his Oration *pro Murena* saith, he was Lator or Maker of: This Law enacted, *that those who did compass and attain Honour and Magistracy by money, should be punished with great pecuniary Mulcts, and also be made Infamous:* and the reason which that Law gives is, *quia suæ virtuti non confidunt, sed per circuitum ambiunt populi suffragia & Magistratus*; and one saith, *Simile crimen Ecclesiasticum est simonia.* And indeed so it is, for *Qui pecunia & largitionibus honores — Sacerdotia & Magistratus ambiunt, his pœna deportationis est prastituta,* This was the ancient punishment among the *Romans*, (to wit) exile and banishment, *sed postea* (saith he) *Ex S. C. ad interpretationem leg. Juliæ promulgato pœna sed auctorum cum nominis Infamia est constituta*, so that after it was turned (as is said before) into Mulct

Pacius annot. in Justini. Iustit. fol. 423. Minsinger. Scholia in Justin. Iust. t. lib. 4. de publiciis Judiciis. Tit. 18. f. 913. Peter Martyrs Common places. fol. 47. See Godw. Antiq. f. 241. Minsinger. Ibid.

Muſct and Infamy. Thus far, (and it is very far) Scythians and Pagans go, now hear what others tell you.

Seneca Epiſt. 91. Salvian. Eccl. 10. 6.

Seneca in his Epiſtles ſaith, *Aureum ſeculum in quo honores melioribus* (gratis) *dabantur; for dignitas in indigno eſt Ornamentum in luto*, a great and a good mind becomes places of Truſt, for *folly ought not to be ſet up in dignity*, if *Solomon* be of any credit with us.

French Hiſtory fol. 153.

It was an excellent Eulogy given by the Hiſtorian to *Lewis* the ninth of *France*, *That the Realm being corrupted with the Injuſtice and extortion of the former Raigns, by the ſale of Offices and places of Truſt, (it being moſt certain that what we buy in Groſſe we muſt ſell by Retaile.) This King* Lewis *the ninth did expreſly prohibit thoſe ſales, ſupplied ſuch places as were void according to the merit of perſons, after due examination, to draw good men and of underſtanding to apply themſelves to ſtudy, otherwiſe they ſhould have been ſtroudly tempted rather to have ſtored themſelves* with money *then* merit, *with* Gold *then* Goodneſs.

Mornay on the 101. Pſalm. fol. 135.

The honorable and learned *Mornay*, ſpeaking to *Henry* the fourth of *France* in his Meditation upon the 101. *Pſalm*, ſaith thus. *The Princes Eye and Care ſhould be upon the beſt ſort of men, to ſet them in Offices, and BESTOW Charges upon them; thoſe that affect ſuch places he ſhould alwaies ſuſpect them, their perſons and practiſes, for he that earneſtly aimeth at an Office or Living, without doubt deſireth it for the* Profit, *not for the* Charge.

Latimer fifth Sermon before King Edward the ſixth.

Reverend old *Latimer*, in a Sermon of his before King *Edward* the ſixth, hath theſe words. *God defend that ever any ſuch enormity ſhould be in* England, *That CIVIL OFFICES ſhould be bought and ſold, whereas men ſhould have them given them for their worthineſs — the holy Scripture qualifieth the Officers, men of Courage, Wiſe, fearing God, &c.*

Ludov. Lavat. fol. 291. b.

Learned *Lavaterus* in his Commentary upon the Proverbs of *Solomon*, 29. chap. verſe 4. tells you, That *Munera dantes & accipientes perdunt Rempublicam, nam ubi Corruptela munerum, locum habet, vera Religio, & Juſtitia concidunt.*

Bucerus.

Bucer alſo hath to this purpoſe; *Offices are not Livings and Salaries, but Charges and Duties; not preferments for favorites, but rewards for deſerts.*

Julius. Theodoſius, &c.

Julius, *Theodoſius*, &c. ſay much more.

Auguſtus

Auguſtine in his Book *de Civitate Dei* ſaies, *That ſuch as pro-vide themſelves places and are not* PROVIDED *for them, come into them and execute them not with a mind of doing good, but of Domineering, not of* providing *for others, but for their own turnes.* *Aug. lib. 10. de Civ. Dei c. 14.*

A learned Interpreter upon *Joſhuah*, ſpeaking of the backwardneſs and loathneſs of *Joſhuah* to be advanced to *Moſes* Room, (though yet he was a man of a great Spirit and Wiſdom,) notwithſtanding Gods earneſtneſs, and multiplyed incouragements to him lets fall this Concluſion: *None are leſſe worthy of advancement then thoſe who hunt moſt eagerly after it, and thoſe who ambitiouſly ſeek an Office or Honour, do* ipſo facto *by that very Act, diſcover their extreme unworthineſſe, and that of all other men they deſerve it not.* It is certain, That *a modeſt undervaluing of Self is an ordinary attendant upon true worth*; this will appear if we conſider how *Auſtin* often *fled* from preferment, *Nazianzen* *refuſed* it till the perſwaſions and importunities of an *Emperour* prevailed with him. *Bazil* was *Haled* into it, *Chryſoſtom hid* himſelf from it, theſe men weighed their own ſtrength and ſufficiency, the importance of their *Charge*, the account they muſt give, and the ſlippery places they muſt ſtand in; the conſideration whereof cooled all ambitious heats in them, and blunted their Appetite to Honour or Advancement, they well knowing what *Cauſin* ſaith, *That the paths of Honour and Preferment are upon Ice, and bordered upon Precipices, as well as Honour and Advancement attained is ſituated near unto it.*

Qui Magiſtratus ambiunt eorum ſunt indigniſſimi. Multa honeſtè accipi poſſunt quæ tamen honeſtè peti non poſſunt. *Auſtin.* *Nazienzen.* *Baſil.* *Chryſoſtom.* *Cauſin.*

And all men know, that *Honores mutant mores, ſed raro in meliores, quia Honor eſt ſicut Hedera, quæ arbores exſiccat, in quas ſerpit.*

But there is little need of looking abroad from other Authorities, Hiſtories and Lawes for aid againſt the ſale of Offices and Places of Truſt, or for diſpoſing of them to the moſt Worthy, the Lawes of *England* are of themſelves ſufficient to this purpoſe.

Fleta a very ancient Author ſaith, That the time of *Edward* the firſt, was very famous for good Judges and Officers, for they came to their places *ſine precio aut prece*, without price or prayer. *Fleta.*

The Statute of 34. *E.* 3. cap. 1. in the laſt Edition by *Powlton*, 34 *E.* 3. *c.* 1

Or-

Ordaines that Justices of Peace of the most *WORTHY* of their Country shall be *ELECTED*, and joyned with some learned in the Law, &c. but if you look into the old ancient Edition of the Statutes, the words of that Statute is (the most valiant,) so that be it one or other, their Election implies them to be freely chosen; and their being most valiant or most worthy, fully answers the word of God as to either of those single qualifications.

12. R. 2. cap. 2. But if we descend a little lower, and look into the next Kings Raigne, we shall find a most Excellent Statute made in the 12. year of that King, (viz.) *Richard* the second. The words of which Statute I shall set down at large, because of the inestimable worth and value of it, (viz.) *It is accorded that the Chancellor, Treasurer, Keeper of the Privy Seal, Steward of the Kings house, the Kings Chamberlain, Clerke of the Rolls, the Justices of the one Bench or the other, Barons of the Exchequer, and all others that shall be called to ordain Justices of the Peace, Sheriffes, Escheators, Customers, Comptrollers, or ANY OTHER Officer, or Minister of the King shall be firmly sworn, That they shall not ordain, name or make Justises of Peace, Sheriffe, Escheator, Customer, Comptroller, nor any other Officer or Minister of the King for ANY GIFT, BROCAGE, FAVOUR or AFFECTION, nor that none that PURSUETH by him or by others, PRIVILIE or OPENLIE to be in any manner of OFFICE, shall be put in the same Office or in any OTHER, but that they make all such Ministers or Officers of the BEST and MOST LAWFULL men and SUFFICIENT to their ESTIMATION and KNOWLEDGE.*

Com. 379. Certainly this is a Statute that is a most Excellent one, none (beneath the Spirit of God) could pen a better, unlesse he could get a pen made of a quill snatcht from the wing of a Seraphym to doe it; but alas, it is a carcasse without a soul, and we have need of the head and hands of Seraphyms to put it in Execution.

Co. littl. f. 234. Sect. 379. Of this law the Lord *Coke* saith, *That it is worthy to be written in letters of Gold, but more worthy to be put in Execution, for (saith he) certainly never shall Justice be duly administred, but when the Officers and Ministers of Justice be of such quality, and come to their places in such manner as by this law is required.*

There

There is another Excellent Statute made in the 5. year of *Edward* the ſixth, againſt buying and ſelling of ſome ſort of Offices to which there is a ſevere penalty annexed; by which Statute no Office in any wiſe relating to the Adminiſtration of Juſtice or Clerkſhip in any Court of Record, or concerning the Kings Treaſure, Revenue, Accompt, Aulnage, Auditorſhip, Surveyor, or keeping of any *His Majeſties* Caſtles, Fortreſſes, &c. may be bought or ſold, and if it be, then all and every ſuch perſon and perſons as ſhall bargain or ſell any of the ſaid Office or Offices, Deputation or Deputations, of any of the ſaid Offices or any part of them, or that ſhall take any money, fee, reward or profit for any the ſaid Office or Offices, Deputation or Deputations, &c. or that ſhall take any Covenant, Bond or Aſſurance, for any money, reward or profit, to be given for any the ſaid office or Offices, Deputation or Deputations, &c. The perſon ſo bargaining or ſelling, or that ſhall take any ſuch Promiſe, Covenant, Bond or Aſſurance, ſhall not only forfeit his eſtate and intereſt therein, but alſo every perſon ſo Buying, Giving or Aſſuring, ſhall be adjudged a diſabled perſon to have or enjoy the ſaid Office or Offices, Deputation or Deputations, &c. and that all ſuch Bargains, Sales, Promiſes, Covenants and Aſſurances, as is before ſpecified, ſhall be void. 5. E. 6. c. 16.

In this Act are excepted ſome Offices, as the Office of Parkerſhip, or of the keeping of any Park, Houſe, or Mannor, Garden, Chaſe or Forreſt, ſuch Offices as are in the diſpoſe of the two Chief Juſtices of the Kings Bench and Common Pleas, and Juſtices of Aſſize.

Upon this Statute a famous Caſe between Sir *Robert Vernon*, the Kings Cofferer, and Sir *Arthur Ingram* was adjudged in *Michaelmas* Term 13. Jac. *Sir* Arthur Ingram *gave a ſumme of money to the ſaid Sir* R. V. *for ſurrendring his Office to the King, with intent to have a grant made to him, the ſaid Sir* A. I. *which was accordingly done, and Sir* Arthur Ingram *admitted to the place, and ſworn, and yet the Lord Chancellor* Egerton *and the Judges, did reſolve that the ſaid Office was void, and Sir* A. I. *diſabled to have or take the ſaid Office, and that a* non obſtante *in his grant could not diſpence with this Act, to enable the ſaid Sir* A. I. *to enjoy it, and Sir* Arthur Ingram *was thereupon removed, and Sir* Mar- Co. Lit. f. 234. Sect. 379. Co. 3. Inſtitutes c. 71. f. 154.

maduke Darrell (*by the Kings Commandment*) sworn in his place, *and all Promises, Bonds and Assurances between Sir* R. Vernon, *and Sir* A. Ingram *adjudged void.*

Co.lib.3.f.83. in *Twynes* Case.

I shall instance in one Case more upon this Statute, and leave you to examine the Authorities in the Margin, to satisfie your self further if you see cause; the Case was between one *Lee* and his Wife Executrix of one *Smith* deceased Plaintiff, and *Mary Colshill* Executrix of *Thomas Colshill* Defendant in debt upon an Obligation of 1000. markes Intr. Rot. 1707. Colshill *the Testator had the Office of one of the Customers of* Queen Elizabeth, *by Letters Patents to him and his Deputies, and by Indenture between him and* Smith, *the Testator of the Plaintiff, and for* 600. l. *paid, and a* 100. l. *per annum, to be paid during the life of* Colshil, *made a deputation of the said Office to* Smith, *and* Colshill *covenanted with* Smith, *that if* Colshill *should die before him, that then his Executor should pay unto him* 300. l. *and divers Covenants were in the said Indenture concerning the said Office, and the enjoying of it, and* Colshill *was bound in the said Obligation to perform the Covenant, and the Breach was alledged in the non-payment of the said* 300. l. *for as much as* Smith *survived* Colshill, *and although the said Covenant to repay the said* 300. l. *was lawfull, yet for as much as the rest of the Covenants were against the Statute of* 5 E. 6. c. 16. *and if the addition of a lawfull Covenant should make the Obligation of force, the Statute should serve for little or no purpose, for this cause it was adjudged that the Obligation was utterly void.*

5 E. 6. c. 16.

Co.Lit.120. Cro.1.rep.425 & 330. Cro.2. rep f.385. pl. 16. Hob.rep. f. 75. Co.12. pars f. 74. & 101. &c.

These two Cases give you intimation enough what the Law of *England* deems of selling of Offices as an addition to what is before, yet I shall refer you to the severall Cases in the Margin to satisfie your self more fully, wherein you shall find corrupt Ecclesiasticall preferments, (which are *quodammodo* Offices) or Symony, to fall under the same censure of our Law, as well as other Lawes.

From all the Authorities and Lawes that I have thus troubled you with the mentioning of, give me leave to infer thus much:

1. That the sale of Offices and places of Trust, whether Originall or Deputed, is pernicious to the Kings Majesty, for it corrupts the Chrystall stream of His Justice, and it makes that Vendible

dible that should be free. For he that will be so sordid as to buy against Law, will think himself indulged to be so base as to sell also against it.

2. That the light of Nature is not so dim and purblind, but it can see, nor so extremely degenerated, but it can abhor Corruption and unworthiness in places of Trust.

3. That *venalis Justitia* is worm-wood to the people of the Realm, yea, I may say *venome*, that empoysons its purest morall streams, and makes the Law a leaden *Lesbian Rule*, to bend at every beck of the *Diana* of Profit; or if I may modestly say it, to crawle after her posteriors. Thus the ship of the Realm must shift her sailes as the wind of the Goddesse-money shall blow; and it must saile this or that, or any other way, though it be upon apparent Shelves and Rocks, to the hazard of its Ruine, if money bids.

4. It spoiles the Harmony of the World by inverting the Order of Nature, *Virtus post Nummos*, &c.

5. It is a Bar to Ingenuity and Study, after all noble endowments as I said before, if Gold shall over-ballance Goodness; if an Asse laden with money shall carry the precedency and preheminence before an Heroick and Generous soul, never so well furnished and laden with Worth and Learning, the richest earthly furniture of mankind.

But, Sir, before I come to your Question, let me have a little more Liberty, and I will not trespasse long upon you.

It is certain, That His Majesty doth not, nor His Ancestors have not sold Offices and Places of Trust in their mediate disposé, nor have they usually, unless upon misinformation, disposed them to persons unfit and uncapable; and if sometimes it so happened, the wisdom of upright Judges have laid them aside, notwithstanding they had Patents under the Great Seal of *England*; and when they were so put out, the Kings of *England* have given their Places to other fit and capable persons; I shall give you at this time but one instance, which was one *Vintor*, who was made Clerk of the Crown by *Edward* the fourth by Letters Patents, but being found unsufficient, was laid aside by the Judges of that time, and that King, by advice of the Judges appointed one *West* a fit person in his place. Bro. Office pl: 48. 5 E. 4. 10. 66.

It is also certain, that divers places under the Lord Chancellor or Lord Keeper are, by prescription in his dispose, and have been and usually are sold as the Cursitors places, &c. the 6. Clerks &c. in the dispose of the Master of the Rolls, and sold by him. The Philizers, &c. in the dispose of the chief Justice of the Common Pleas, and other Places, in the dispose of the chief Justice of the Kings Bench, and Justices of Assize, and have been also sold by them respectively; which time and silence hath admitted them also to sell.

I have omitted any particular or distinct discourse of *Judiciall* Places, (though yet some *light touches* of them also may be observed herein) as conceiving no man so far *benighted with Ignorance*, and consequently so hardy, as to affirm them to be *Vendible* by Law, or to be given to such men as are *insufficient*, or (as Learned *Bacon* saith in another Case) to such as are *Blind in the Colours of good and evill*: Philosophers have an *Axiome*, That there are *Principia, quæ dicuntur DIGNITATES, ob id, quod jure illis fides habenda sit, cum ea unusquisque statim admittit, ut totum unum quodlibet majus est sua parte.* There is a *Communis conceptio vel Notitia*, (i. e.) *a Notion*, not *meerly probable*, and so obvious onely to *wise men*, but such a Notion that for its *dignity and self-evidence* may justly be styled the *universall suffrage of all mankind in all Nations*, so *cogent*, and (if I may say it) *Mathematically Demonstrative*, that it fetches its *clear bare-faced and fore-right* proofs from the *Common Remaines* of *lapsed* Nature; so that a *Midnight Ethnicke* can, without *Pause* or *Study*, not onely tell you that he that *buyes* dearly, cannot *give* freely; but that a blind *Polyphemus* in such a Magistracy is a *Monstrum*, &c. — *ingens, cui lumen ademptum.*

Thus much in generall and briefly touching the sale of Offices, and insufficiency of Officers, the Law affording much more, if need required, or had I more time: *He that was born in a bottle, and never looked into the world, but through a hole*, may easily see the inconveniences that pursue at the heels of such practises; but here I desist as to what I promised to say in Generall.

Charon.

Now to give you the best satisfaction in short to your Question, viz.

Quest. *In whose dispose the Clerk-ship of the Peace in every County is?*

I must confess that I did think this a very needlesse question, when the experience of all my life, and I believe of yours, hath been, that the *Custos Rotulorum* had the gift of that Place; and I ever looked upon the Clerk of the Peace as his servant, he himself being the Keeper of the Records, and answerable for them, and not his Clerk; and I did alwaies conceive, with submission to better Judgments, that the Donation of this Place of Clerkship was an inseparable incident to the *Custos*, like that Case of *Scrogs* in *Dyer*, where Queen *Mary* granted the Exigenters Place for *London*, (being vacant, after the death of Sir *Robert Brook*, chief Justice) to one *Colshill*, and afterwards made Sir *Anthony Brown* chief Justice of the Common Pleas, who refused *Colshill*, and made *Scrogs* Exigenter in his Place; and a great strife arising about it, Queen *Eliz.* in the first year of her Raign referred it to Sir *Nicholas Baton*, Chancellor, the Judges of the Kings Bench and Exchequer, Atturney Generall, and Atturney of the Dutchy (*exclusis omnibus Justiciariis de Communi Banco,*) who after great deliberation and dispute, did resolve, that *Colshill* had no Title, and that the Donation of this Office did not belong to the Queen, but only to the disposition of the chief Justice, and as an inseparable incident belonging to the person of the chief Justice, and that by use and prescription.

Answ.

Dyer 175. pl. 25.

Of the Common Pleas.

In *Mittons* Case in the Lord *Coke* (where the fore-mentioned case is cited,) it is resolved, that though Queen *Eliz.* by her Letters Patents under the Great Seal, had granted to the said *Mitton* the Office of Clerk of the County-Court or shire-Clerk of the County of *Somerset*, with all fees, &c. for term of life, in the vacancy of a Sheriff, and after made *Arthur Hopton* Esq; Sheriff there, who interrupted *Mitton* in that place, claiming it as incident to his Office, and upon his complaint to the Lords of the Council, it was referred to chief Justice *Wray* and *Anderson*, (before whom Counsel was heard, and the matter often debated,) after conference with the other Judges, it was agreed by all the Justices, *Nemine contradicente aut reluctante*, that *Mittons* grant was void in Law, and one of the Reasons given thereof in short in this, *That the County-Court, and all entring of proceedings there, are incident to the Office of the Sheriff, and therefore cannot by Letters Patents be divided from it; and although*

Mittons Case Co. lib. 4. f. 33, 34.

though the said Grant hath been made to Mitton, when the Office of Sheriff was void; for it had been void, and when the Queen shall appoint one, he shall avoid it.

And though I conceive this were enough to satisfie you in so easie a Case, as to whose gift it is, and that it is an incident to the *Custos Rotulorum*, yet I shall direct you to two Statutes, and the opinion of a very Learned and Reverend Judge in the point; and then forbear your further trouble till I hear of your further doubts herein.

37 H.8. c. 1. The first Statute is 37 *H.8. c.* 1. wherein the third Paragraph of that Statute you shall find, that the *Custos Rotulorum* for the time being for every shire of this Realm and *Wales*, and other Dominions, &c. shall at all times *thereafter* Nominate, Elect, Appoint and Assign all and every Person or Persons which *thereafter* should be Clerks of the Peace within any the said shires, &c. You may peruse the Statute at large for your better satisfaction, and see the provisoes in the close of the Act.

3 & 4. E.6. c. 1. The second Statute is 3 & 4 *E.* 6. *c.* 1. whereby in the third Paragraph also of that Statute it is ordained, that the Person or Persons that Appointed, Elected, Named or Assigned to exercise and enjoy the Office of *Custos Rotulorum* in every County, may exercise the same, by *himself* or his sufficient Deputy, &c. so that it is implied by this Statute, that there is no necessity of a Clerk of the Peace, if the *Custos* will please to exercise the Place himself, as it seems he may, and take no Deputy; as the high Sheriff may exercise the Place of his Deputy-Sheriff himself, if he please in his own Person; and Deputies in such cases are but Instruments Acted by the principall Agent, and are accounted but *partes animatæ dominorum*, doing that which the Masters themselves may take upon them; but if they please, for ease or Honours sake they may forbear.

Co. 2. Instit. f. 674. It now remaines, that I give you the opinion of the aforementioned Learned Judge, which is the Lord *Cokes*, in his second Institutes, to wit, Comment upon the Statute of the 27 *H.* 8. *c.* 16. speaking of the *Custos Rotulorum* saith, That his Place is of the gift of the Lord Chancellor or Lord Keeper, and he may exercise his Office by Deputy, and hath the Custody of all Bargains and Sales, &c. and of all Records and Rolls

Rolls of the Seſſions of Peace, and of the Commiſſion of Peace; whence he takes his name of Office, &c. *He hath the gift of the Clerk-ſhip of the Peace, to exerciſe by himſelf, or his Deputy, but he continueth no longer in his place, then the* Cuſtos Rotulorum *doth.*

Thus, Sir, you have my ſudden and indigeſted thoughts, not ſo methodically as I could wiſh, nor ſo largely as I could have done, had not your Command bound my ſearches within the Confine of ſo ſmall a ſpace of time, but I hope however you will take it in good part. I have in the Margin for your better ſatisfaction ſet down the Authorities and Caſes in Law that warrant my aſſertions, to the end that (if you pleaſe) you may try what is here ſaid by the Touch[illegible] and have recourſe to the Spring-head. I am

SIR,

Sept. 19. 1660.

Your humble Servant

E. N.

FINIS.